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99TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPT. 99-699 Part 1

ORIGINAL

PARENTAL AND MEDICAL LEAVE ACT OF 1986

JULY 21, 1986.—Ordered to be printed

Ms. OAKAR, from the Committee on Post Office and Civil Service, submitted the following

REPORT

[To accompany H.R. 4300 which, on March 4, 1986, was jointly referred to the Committee on Education and Labor and the Committee on Post Office and Civil Service]

[Including cost estimate of the Congressional Budget Office]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 4300) to entitle employees to parental leave in cases involving the birth, adoption, or serious health condition of a son or daughter and temporary medical leave in cases involving inability to work because of a serious health condition, with adequate protection of the employees' employment and benefit rights, and to establish a commission to study ways of providing salary replacement for employees who take any such leave, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purposes of this legislation are to (1) entitle employees to parental leave in cases involving the birth, adoption, placement for foster care, or serious health condition of a son or daughter and temporary medical leave in cases involving inability to work because of a serious health condition, with adequate protection of the employees' employment and benefit rights and prohibition of coercion, and (2) to establish a commission to study ways of providing salary replacement for employees who take any such leave.

COMMITTEE ACTION

On October 17, 1985, the Subcommittee on Civil Service and Compensation and Employee Benefits of the Committee on Post

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Office and Civil Service, and the Subcommittee on Labor-Management Relations and Labor Standards of the Committee on Education and Labor held a joint oversight hearing on the issue of parental and disability leave (Serial No. 99-36).

On March 4, 1986, Representative William Clay introduced H.R. 4300, the "Parental and Medical Leave Act of 1986," a bill to entitle employees to parental leave and temporary medical leave. This bill is similar to legislation introduced earlier by Representative Patricia Schroeder which was the subject of testimony during the October hearing. H.R. 4300 was referred jointly to the Committee on Post Office and Civil Service and the Committee on Education and Labor. Only the provisions of title II of H.R. 4300 fall within the jurisdiction of the Committee on Post Office and Civil Service, and the committee's consideration of the bill was confined to those provisions.

The Subcommittee on Civil Service and the Subcommittee on Compensation and Employee Benefits held a joint public hearing on H.R. 4300 on April 10, 1986 (Serial No. 99-56).

On May 8, 1986, the Subcommittee on Compensation and Employee Benefits, by voice vote, approved H.R. 4300 for full committee consideration.

On June 11, 1986, the Committee on Post Office and Civil Service, by a record vote of 18 to 0, and with a quorum present, ordered H.R. 4300 favorably reported without amendment.

Summary of Title II of the Bill

H.R. 4300 would entitle Federal employees to 18 weeks of job-protected leave without pay (parental leave) upon the birth, adoption, placement for foster care, or serious health condition of a child. The bill also would entitle Federal employees who, because of serious health conditions, become unable to perform their duties to 26 weeks of job-protected leave without pay (temporary medical leave). Both parental leave and temporary medical leave are to be in addition to any annual leave, sick leave, or other leave or compensatory time off otherwise available to the employee. An employee may choose to coordinate parental leave or medical leave with any other leave time available. An employee may take the leave under a method involving a reduced workday, a reduced workweek, or some other alternative work schedule. The leave may be taken on a continuing or intermittent basis or any combination of the two.

Federal employees who use parental or medical leave would be entitled to be restored to the positions they held immediately prior to taking leave. Any interference with an employee's right to take parental or medical leave, through coercion, intimidation, or threat, is prohibited.

Federal employees who are enrolled in a Federal employees health insurance plan may continue their health insurance enrollment while on parental or medical leave by making arrangement to pay the employee's contribution to the health benefits fund through their employing agencies.

The Office of Personnel Management (OPM) will prescribe regulations necessary for the administration of the parental and medical leave provisions.

STATEMENT

Limitation of antidiscriminatory laws

In the early 1970's, efforts were made to use title VII of the Civil Rights Act of 1964 (Public Law 88-352) and the equal protection clause of the Constitution to remedy discrimination against pregnant women and working mothers and fathers who sought to fulfill parental responsibilities. Setbacks in the U.S. Supreme Court led to the passage, in 1978, of the Pregnancy Discrimination Act of 1978 (PDA) (Public Law 95-555), an amendment to title VII.

The effects of the Pregnancy Discrimination Act have been far reaching. Employer policies requiring terminations and mandatory leaves for pregnant wage earners are clearly illegal. Pregnant women are entitled to work until childbirth or until medical complications of pregnancy render their continued participation medically inadvisable, and they are entitled to return to work on the same basis as other temporarily disabled workers. Women who become disabled because of pregnancy-related conditions are entitled to paid sick leave, personal leave, disability benefits, and medical insurance and hospitalization on the same basis as other disabled workers. Moreover, title VII has been interpreted to require that leave for the care of children be granted to fathers on the same basis as an employer grants such leaves to mothers.

As important as title VII and the PDA has been, they are not totally adequate. Title VII, as amended, is an antidiscrimination law. Its aim is to prohibit employers from treating persons differently on the basis of race, sex, religion, or national origin. Compliance with title VII requires only that employers treat all employees equally.

Specifically, if an employer grants sick leave and provides disability and health insurance coverage to employees in general, it must, under the PDA and title VII, provide equal coverage to pregnant wage earners who become sick or disabled. If the employer provides no such benefits to anyone in its work force, it is in full compliance with antidiscrimination laws because it treats employees equally. Similarly, the employer is free to fire employees who take leave to care for seriously ill or dying children or to bond with newly born or adopted children provided it does so evenhandedly without regard to sex. Thus, while title VII, as amended by the PDA, has required that benefits and protections be provided to millions of previously unprotected women wage earners in this country, it leaves gaps which an antidiscrimination law, by its nature, cannot fill. This bill, H.R. 4300, is designed to fill those gaps.

Temporary medical leave

Existing law (5 U.S.C. 6307) entitles Federal employees to sick leave but provides no guarantee of time off for extended periods of illness or injury. Leave without pay may be requested, but it is granted at the discretion of the employing agency. There is no certainty than an employee will receive the needed leave. The Federal Government treats pregnancy like any other medically certified temporary disability. Employees may use available sick leave to cover medical appointments and any period of incapacitation. Leave without pay also may be requested.

H.R. 4300 would entitle a Federal employee to up to 26 weeks a year of job-protected leave without pay for a serious health condition which renders the employees unable to perform the functions of such employee's position. This temporary medical leave is a new leave entitlement and is to be in addition to any annual leave, sick leave, parental leave, or other leave or compensatory time off available to the employee. The employee may choose to take the temporary medical leave in combination with any other type of leave.

The employee may take the 26 weeks of leave on a schedule designed to accommodate the employee's specific medical problem. The leave can be taken on either a continuing or intermittent basis; in the form of a reduced workday, a reduced workweek, or other alternative work schedule; or through a combination of any such methods. The purpose of this leave is to accommodate all types of illnesses and injuries and to afford an individual the opportunity to return to work.

The test of whether a Federal employee is entitled to temporary medical leave is twofold. First, is the employee "unable to perform the functions of such employee's position"? And second, is the inability to perform those functions due to a "serious health condition"? This test ensures that there will be no discrimination on the basis of sex, and that employees who need it the most—employees with serious medical conditions that prevent them from working for a limited period of time—have adequate job security.

H.R. 4300 ensures that Federal agencies continue their practice of treating employees affected by pregnancy, childbirth, and related medical conditions in the same manner as they treat other employees who become unable to work. The committee recognizes that a special "maternity leave" requirement could be used to deny women job opportunities. Faced with the knowledge that job-protected leaves were required for working mothers and working mothers only, hard-pressed employing agencies would very likely be reluctant to hire or promote women of child-bearing age. However, since employers would be required under H.R. 4300 to provide job-protected leave for all employees, they would have little incentive to discriminate against women.

The twofold test of inability to work and serious health condition also serves to ensure the availability of leave for serious health conditions. The term "serious health condition" is defined to mean—

> an illness, injury, impairment, or physical or mental condition which involves—(A) inpatient care in a hospital, hospice, or residential medical care facility; or (B) continuing treatment, or continuing supervision, by a health care provider.

This definition is intentionally broad to cover various types of physical and mental conditions for which employees may need leave. The definition is intended to cover pregnancy, childbirth, and all attendant conditions, since they often involve inpatient care and always should involve continuing supervision by a health care provider.

Under this definition, the illness or condition must involve care or continuing treatment or supervision. The employee need not be an inpatient or undergoing treatment at the time the leave is requested to qualify as having a "serious health condition." Thus, an employee with a heart condition may require leave as a means of temporarily relieving the stress associated with work. Similarly, a pregnant woman who is unable to work due to severe morning sickness would qualify for leave under this provision, even if she need not go to the hospital or the doctor to treat the condition each day.

An employee with a serious health condition may be unable to work simply for need to undergo medical treatment. An arthritic employee may need periodic physical therapy; a cancer patient may require chemotherapy treatments.

Traditional leave policies focus on sick leave that is necessary to restore an employee to health. H.R. 4300 adopts a more reliable focus by acknowledging the distinction between sickness and disability.

Parental leave

In the last half century, the increasing participation of women in the work force at large has created significant social changes in the United States. In 1970 less than 30 percent of married women with children under 2 years old also were working outside the home. Today, almost 50 percent of these women are working, and the percentage continues to grow. It is estimated by the Bureau of Labor Statistics that from 1984 through 1990, women will comprise 67.7 percent of those entering the work force. Women represent the sole parent in 16 percent of all families. In addition, in most two-parent families, both parents work. By contrast, the family in which the husband is the sole wage earner and the mother is the homemaker—so long thought to be typical—now constitutes ony 7 percent of American households.

Despite this revolution in the structure of the family, the United States, alone among industrial societies, has no national policy regarding parental leave. There is no separate category of leave in the Federal service designated "maternity leave." The Federal Personnel Manual (FPM) treats pregnancy like any other medically certified temporary disability. Therefore, sick leave may only be used to cover the time required for physical examinations and to cover the period of incapacitation. Because the needs of a newborn extend beyond the mother's incapacitation, Federal employees may request additional time off to be taken as annual leave or leave without pay.

There is now no guarantee that Federal employees will receive the additional time they require. Many workers are forced to make difficult choices between the need to provide necessary physical and emotional care for a new child and the need to maintain gainful employment. We believe that to promote the stability of the family as a social institution, we must ensure that our social policies reflect the economic reality in which families exist.

H.R. 4300 speaks to the need of parents for time off from work obligations when a child is born or brought into a family by providing up to 18 weeks of leave without pay. All Western and Eastern

European countries require employers to grant such leaves, as Dr. Sheila Kamerman of Columbia University School of Social Work has documented, and all provide for a time period longer than that proposed in H.R. 4300.

The typical wage-earning woman in the United States will have two children during her employment. Over the course of a working lifetime, the leave associated with caring for those two infants is small, particularly when the benefits to family and society are weighed in the balance.

The amount of time allowed for parental leave—18 weeks, or approximately 4 calendar months—is primarily based on the period that child development experts suggest as a minimum for newborns and new parents to adjust to one another. Dr. Berry Brazelton, pediatrician, recommends 4 months, explaining that the early months of adjustment to a newborn infant are a crucial opportunity for cementing family. The Yale Bush Center recommends leave for a minimum of 6 months.

Such recommendations apply with equal force to the period necessary for newly adopted children and their families to adjust to one another. In fact, some adoption agencies require parents to be home at least 3 years with an adopted child. In her testimony at the October 17, 1985 hearing, Ms. Lorraine Poole, an employee of the city of Philadelphia, described the horrible problems she faced in trying to adopt:

> It was normal agency procedure for the adoptive parent to leave the workplace for a period of 6 months. This time, it was felt, was very important for both parent and child. As with birth parents, adoptive parents needed time for nurturing and bonding. This was considered vital with the placement of infants. I had completed all those conditions of the adoptive agency, with one exception, the necessary time away from my place of employment.
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> I contacted the personnel division of the Philadelphia Recreation Department. The personnel officer listened as I explained what my need was, parental leave for adoption. There was a chuckle. She stated: "You've got to be in the hospital." I thought I had not made my meaning clear. I was not seeking maternity leave, but parental leave for adoption. It was then that I was told the only leave available for parents was maternity leave.
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> I did submit a request for the use of vacation and personal leave of absence for a period of 6 months. I was given approval for 2 weeks vacation. When I asked for a review, I was told that there would not be a promise that my position would be available when I returned to work. It was with this knowledge, without job security as a single parent, it would not be in the best interest of the child that I adopt at that time.

Working parents of seriously ill children face especially difficult problems and require the security of knowing they will get time off when they need it. This was forcefully brought out in the hearing

testimony of Ruth Milam in which she described her family's experience coping with her daughter Sheila's leukemia:

> I cannot imagine what we would have done if either of us had been told that we must be at work or we will lose our job. Throughout this time, Sheila has needed us there and we have needed to be with her. But we could never have afforded to be without work. Our jobs pay for the health insurance, Sheila's medications, our home, food, and kid's education.
>
> People should not be forced to make a decision between their work and time with their seriously ill children. The horrible confusion and distress of having a sick child should not be compounded by fear that you'll lose your job.

Leave to care for a seriously ill or injured child is essential to provide that child the security of having a parent there in a time of crisis. If a child must undergo major surgery, the leave may be necessary to encompass the surgery itself and the subsequent recuperation period during which at least one parent must stay home to nurse and care for the child. Similarly, if a child's serious health condition requires that the child receive specialized services at school or be placed in a different school setting that provides those services, the parents may need the kind of leave provided by H.R. 4300 to make satisfactory arrangements.

Further, for parents with children with disabilities, the choice as to whether to keep them at home or to place them in institutions will often depend upon whether the parents are able to keep their jobs and yet obtain sufficient leave to provide their children with the support and assistance they require. According to Bonnie Milstein of the Consortium of Citizens with Developmental Disabilities:

> The overwhelming majority of families now keep their [disabled] children at home. A major reason for this shift away from institutionalization is that study after study has proved the debilitating effects of institutionalization and its costliness. On the other hand, the individual with disabilities who is allowed to remain in a family environment has a much greater likelihood of learning the skills necessary for independence and a fulfilling life in the community.

New parents of healthy children also need time to make appropriate day care arrangements. Given the current problems in the availability and affordability of child care, 18 weeks of leave may be required to secure a proper situation.

Providing sufficient parental leave not only benefits employees but also benefits employers by ensuring productivity. According to Catalyst, a research and consulting firm to major businesses on personnel policies:

> A program that brings employees back to work before they are rested and ready may actually be more deleterious to productivity than allowing an extended leave. The odds are good that leave-takers who return too soon will not be fully productive or will make costly and needless

> mistakes. . . . When insufficient leave time results in an employee's attrition, the cost of replacing the employee can be substantial.

In a staff study conducted in the fall of 1985, the Subcommittee on Civil Service found that some Federal agencies have developed parental leave policy statements. Others have collective bargaining agreements providing specific maternity or parental leave benefits. Yet, all 53 Federal agencies responding to the study leave the final decisions involving maternity, paternity, and adoption leave up to the discretion of the supervisor concerned.

H.R. 4300 brings standardization to this very inconsistent and haphazard approach. It entitles a Federal employee to a maximum of 18 weeks of leave due to the birth, placement for adoption or foster care, or serious illness of the employee's child. This parental leave is a new entitlement and is in addition to any annual leave, sick leave, temporary medical leave, or other leave or compensatory time off available to the employee. The employee may choose to take the parental leave in combination with any other available leave. A Federal employee who takes parental leave is entitled to be restored to the position held by the employee immediately before taking the leave.

The employee may take the 18 weeks of leave on either a continuing or intermittent basis; in the form of a reduced workday, a reduced workweek, or other alternative work schedule; or through a combination of methods. The purpose of this leave is to accommodate the serious illnesses and injuries of children which might require periodic hospitalizations or treatments. It also allows new parents to work part time for some period of time after the birth or placement of a child.

The parental leave provided under H.R. 4300 is available to any parent. Thus a father as well as a mother can be granted parental leave as long as the leave is requested to respond to one of the circumstances specified in the statute.

Many children in the United States today do not live in traditional "nuclear" families with their biological father and mother. Increasingly, the people who care for children—and who, therefore, find themselves in need of workplace accommodation for their child care responsibilities—are these children's adoptive, step, or foster parents, or their guardians, or sometimes simply their grandparent or other relative or adult. The legislation deals with such families by defining the term "child" as "a biological, adopted, or foster child, stepchild, legal ward, or child of a de facto parent. . . ." This definition ensures that the employee who is entitled to parental leave is the person who has the actual day-to-day responsibility for caring for the child, or who has a biological or legal relationship to the child. Thus a Federal employee who lives with, cares for, and acts as parent to the employee's grandchild would be entitled to parental leave should the child need care for a serious health condition. So, too, an employee who is divorced from the parent with custody would be able to take parental leave to care for the child.

For an employee to be eligible for parental leave, the child in question must be under 18 years of age unless that child is incapa-

ble of self-care because of mental or physical disability. This provision recognizes that some parents may need to take time off from work to care for the serious health conditions of their sons and daughters who have reached legal maturity, but are unable to take care of themselves.

On July 8, 1986, the Director of the Office of Personnel Management, Constance Horner, issued "New Personnel Guidance on Leave for Parental and Family Responsibilities." This guidance does not change existing personnel policy for Federal employees. It does urge agencies to "strike a proper balance between the needs of the organization, and the needs of the family." While commendable, it does not obviate the need for this legislation.

Employment and benefits protection

Federal employees who take parental or temporary medical leave are entitled to return to the positions they held immediately before taking the leave. Federal employees are also provided with protection against coercion, threats, or intimidation which is carried out for the purpose of interfering with their right to request parental or medical leave. The committee recognizes the possibility that an agency supervisor or manager, feeling pressure to complete certain job assignments, could coerce an employee not to take parental or medical leave.

Accordingly, an employee is prohibited from intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce, any other employee for the purpose of interfering with the employee's right to job-protected parental or medical leave. This includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

Under the Civil Service Reform Act of 1978, the Special Counsel of the Merit Systems Protection Board is responsible for investigating violations of civil service laws. The committee expects the Special Counsel to pursue aggressively any violation of this Act.

Continuation of health insurance

H.R. 4300 allows an employee who is enrolled in a health plan under the Federal Employees Health Benefits Program to continue such health insurance coverage during a period of parental or medical leave. A payment arrangement would be agreed upon between the employing agency and the employee to cover the employee's contributions.

Regulations

The Office of Personnel Management is required to prescribe regulations necessary for the administration of the parental and temporary medical leave programs. These regulations must be consistent with the regulations prescribed by the Secretary of Labor under title I of this Act.

CONCLUSION

In conclusion, H.R. 4300 would establish a universal floor below which employers could not sink in providing for important family needs of employees. Specifically, the bill would create reasonable periods of time during which employees could take leave for medical reasons, early child rearing, and to care for seriously ill children without the risk of termination or retaliation by the employer. It thus recognizes the dramatic change in the work force with the participation of women, especially mothers. Perhaps most importantly, it addresses the needs of the most vulnerable of wage earners, the single woman head of household. It thus speaks tellingly to that crucial intersection between job and home where family needs clash with the demands of a work world which relies as never before on female labor but whose personnel policies are more suited to a male work force with wives performing the traditional and necessary functions in the home.

The job security provisions of H.R. 4300 constitute sound labor and family policy as well as contributing to the equality of the sexes. Wage replacement is a critical element of adquate worker protection, especially for lower income workers. Although H.R. 4300 does not mandate wage replacement, it would create a congressional commission to study methods of providing some wage replacement during parental or medical leave. A number of different models for financing leave are in evidence around the world, including some in place at the State level in the United States. H.R. 4300 requires the commission to make specific proposals to Congress for paid parental and medical leaves within a defined period of time.

H.R. 4300 should not be a burden for the Federal Government as an employer. In fact, the committee believes that this bill will have significant benefits for the government by increasing worker morale, productivity, and retention of quality employees. In many agencies, employees already receive needed time for medical problems and for parental leave. This bill simply establishes a clear Federal policy and ensures that all employees are treated fairly and equitably.

SECTION ANALYSIS OF TITLE II

Section 201. Parental and temporary medical leave

Section 201 amends chapter 63 of title 5, United States Code, by adding a new subchapter III—Parental and Temporary Medical Leave—containing the following sections.

Section 6331. Definitions

Paragraph (1) of section 6331 defines "employee" to mean an "employee" as defined by section 6301(2) of title 5, United States Code, excluding an individual employed by the District of Columbia government. Physicians, dentists, or nurses in the Department of Medicine and Surgery, Veterans' Administration, and teachers or individuals holding teaching positions in the Department of Defense Dependent Schools are specifically included in the definition of "employee."

Paragraph (2) defines "serious health condition" to mean an illness, injury, impairment, or physical or mental condition which involves inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment or continuing supervision by a health care provider.

Paragraph (3) defines "child" to mean a biological, adopted, or foster child, stepchild, legal ward, or child of a de facto parent, who is under 18 years of age or, if 18 years or older, is incapable of self-care because of a mental or physical disability.

Section 6332. Parental leave

Section 6332 establishes a parental leave program for Federal employees. An employee is entitled to request up to 18 weeks of leave without pay because of the birth, adoption, placement for foster care, or serious health condition of that employee's child. The parental leave may not exceed 18 weeks within any 24-month period, and may be taken in addition to any annual leave, sick leave, temporary medical leave, or other leave or compensatory time off available to the employee. The employee may take the 18 weeks of leave on either a continuing or intermittent basis, through a reduced workweek, reduced workday or other alternative work schedule, or by a combination of any such methods.

Section 6333. Temporary medical leave

Section 6333 establishes a temporary medical leave program for Federal employees. An employee is entitled to request up to 26 weeks of leave without pay during any 12-month period if the employee is unable to perform the functions of such employee's position because of a serious health condition. The employee may take the 26 weeks of leave in addition to any annual leave, sick leave, parental leave, or other leave or compensatory time off available to the employee. The employee may take the 26 weeks of leave on either a continuing or intermittent basis, through a reduced workweek, reduced workday or other alternative work schedule, or by a combination of any such methods.

Section 6334. Job protection

Section 6334 entitles an employee who takes parental or temporary medical leave to be restored to the position held by the employee immediately before taking the leave.

Section 6335. Prohibition of coercion

Subsection (a) of section 6335 prohibits an employee from intimidating, threatening or coercing, or attempting to intimidate, threaten or coerce any other employee for the purpose of interfering with the employee's right to job-protected parental or medical leave. Subsection (b) of section 6335 provides that, for purposes of such section, "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

Section 6336. Health insurance

Section 6336 provides for the continuation of health insurance coverage during parental or medical leave. An employee who is enrolled in a health benefits plan under the Federal Employees Health Benefits Program may elect to continue health insurance coverage during a period of parental or temporary medical leave and arrange to pay into the Employees Health Benefits Fund the appropriate employee contributions.

Section 6337. Regulations

Section 6337 requires the Office of Personnel Management (OPM) to prescribe regulations to administer the provisions of the new subchapter III of chapter 63. The OPM regulations must be consistent with the regulations prescribed by the Secretary of Labor under title I of the Act.

COST

The cost estimate prepared by the Congressional Budget Office pursuant to sections 308(a) and 403 of the Congressional Budget Act of 1974 is set forth below.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 17, 1986.

Hon. WILLIAM D. FORD,
Chairman, Committee on Post Office and Civil Service, U.S. House of Representatives, Cannon House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed Title II of H.R. 4300, the Parental and Medical Leave Act of 1986, as ordered reported by the House Committee on Post Office and Civil Service, June 11, 1986. Because little information is available on current leave practices for federal employees and on how agencies would function if H.R. 4300 is enacted, CBO is unable to estimate the budgetary impact of Title II.

Title II of H.R. 4300 would allow federal government employees up to 18 weeks of leave without pay, in addition to any other type of leave, for the birth, adoption, or foster care of a child or to care for a sick child. Title II would also entitle an employee to 26 weeks of leave without pay when the employee is unable to work because of a serious health condition. In addition, Title II would guarantee job protection and allow the continuation of life and health insurance for employees who take such leave.

Under current law, there is no comprehensive federal policy on parental and medical leave. The Office of Personnel Management provides guidelines for granting leave for various purposes, but implementation of leave policy is up to the discretion of each employee's supervisor.

Based on information from a number of federal agencies, it appears that employees who currently take leave without pay for purposes encompassed by H.R. 4300 generally take it for periods of time shorter than authorized by the bill. If H.R. 4300 is enacted, and employees take full advantage of the leave periods, then poten-

tial costs or savings could result. For example, an agency that chooses not to hire a temporary replacement for an employee on leave would save money, because it does not pay the employee's salary during the leave period. On the other hand, if an agency hires a temporary replacement, it could incur additional costs from paying the salary and benefits of the temporary employee as well as the benefits of the employee on leave. Additional costs could also result from increased recruiting and personnel administration.

CBO contacted several of the largest agencies in an attempt to determine current leave patterns, reasons that employees take leave, agencies' current policies on hiring temporaries, and possible changes in such hiring policies under the bill. These agencies, however, were unable to provide sufficient information for CBO to determine whether the bill is likely to result in costs or savings.

Enactment of Title II would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER, *Director.*

OVERSIGHT

Under the rules of the Committee on Post Office and Civil Service, the Subcommittee on Civil Service and the Subcommittee on Compensation and Employee Benefits are vested with legislation and oversight jurisdiction over the subject matter of title II of this legislation. As a result of the hearings, the subcommittees concluded that there is ample need and justification for enacting this legislation.

The subcommittees received no report of oversight findings or recommendations from the Committee on Governmental Operations pursuant to clause 4(c)(2) of House Rule X.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of House Rule XI, the committee has concluded that the enactment of title II of H.R. 4300 will have no inflationary impact on the national economy.

ADMINISTRATION VIEWS

Set forth below are the views of the Office of Personnel Management and the United States Postal Service on this legislation.

U.S. OFFICE OF PERSONNEL MANAGEMENT,
Washington, DC, June 9, 1986.

Hon. WILLIAM D. FORD,
Chairman, Committee on Post Office and Civil Service, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: We wish to advise the Committee of the views of the Office of Personnel Management on H.R. 4300, the "Parental and Medical Leave Act of 1986." This bill would require employers, including the Federal Government, to provide up to 18 weeks of leave, paid or unpaid, to an employee who chooses to stay home with a newborn, newly adopted, or seriously ill child. It

would also require up to 26 weeks of unpaid leave for an employee who is temporarily disabled.

Balancing the demands of career, childbirth and child or dependent care is a matter of growing importance to many employees. This is true because, either by preference or economic necessity, mothers of small children increasingly are seeking employment outside the home. Many employers understand the implications of this trend and recognize that it is in their interests to ease the stress employees face as they strive to balance their responsibilities to their families and to their jobs.

At the same time, it is inappropriate for the Federal Government to dictate uniform national benefits that private employers must provide for their employees. The American people enjoy a standard of living unprecedented in human history. What has made this possible is a system of free and flexible economic arrangements, which can change to meet new needs and to enhance productivity. Further constraints on the freedom to bargain collectively or to make contracts diminish that flexibility and will ultimately lower living standards through diminished productivity.

The Federal Government's own employees enjoy a generous leave system that can accommodate the demands of parenthood.

All employees earn thirteen days of paid sick leave each year, and unused sick leave can be accumulated and carried over from one year to the next without limitation. Employees may use sick leave for periods during which they are temporarily disabled, including periods of incapacitation due to childbirth. Agencies may also advance up to thirty days of sick leave to employees for a serious disability or ailment, and many agencies permit advanced sick leave for childbirth.

Federal employees also receive generous amounts of annual leave. In the first three years of Federal service an individual earns thirteen days of paid annual leave each year. After the third year and through the fifteenth year of Federal service, an employee earns twenty days each year. An employee with fifteen or more years of service earns twenty-six days each year. At the end of a year, employees generally can carry up to thirty days of unused annual leave over the following year.

In addition, employees receive 10 paid holidays a year. When taken together, these leave programs provide seven to ten weeks of paid leave per year, depending on how long an employee has worked for the Government, and most of this leave can be accumulated for future use. For example, an employee who has worked for the Government for 5 years could have taken a week's vacation each year and been sick a week each year and still have 14 weeks of paid leave available.

Finally, employees can receive generous amounts of leave without pay when the agency can grant an employee request without harming its ability to get its work done. And, of great importance to parents, employees continue to be eligible for health and life insurance during leave without pay.

Federal employees also enjoy firm job protections whenever they are on approved leave, whether paid or unpaid. Agencies are obligated to assure continued employment with the same status and

pay to an employee returning from leave, whether for maternity or other purposes.

Even with our very generous program, we want to do more to encourage accommodation of employee needs in this area. The Office of Personnel Management is planning to issue guidance to all Federal agencies on the need to be responsive to employees' needs as parents and to grant requests for parental leave when they can do so without hurting the agency's ability to serve the public. This is an important step which will encourage cooperative attitudes on the part of Federal supervisors and managers.

In addition, we are examining employees' leave needs for other purposes. Our guidance to agencies will address the need for flexibility towards employees who must care for an aging parent or a disabled spouse, for example. We have already urged agency heads to adopt a flexible approach to leave requests from adoptive parents. Moreover, we are also reviewing the Federal leave system as it relates to short-term disabilities.

We believe our approach is preferable to legislation arbitrarily mandating a certain amount of leave in all cases. H.R. 43000 would impose unreasonable and unnecessary burdens on Federal agencies and supervisors. Employees are not interchangable cogs, and it may be extraordinarily difficult in a particular case to replace the employee temporarily or redistribute the absent employee's work load among other, already overburdened employees. Indeed, the need of employees and agencies vary so much from case to case, that no centrally mandated approach can meet these diverse needs. Reasonable solutions can only be arrived at locally, through management and union bargaining and through employee and supervisor discussions of particular needs.

Finally, we must oppose the provisions in the bill that would establish a Commission to explore ways of providing workers with full or partial salary replacement during parental leave. This Commission would be another unnecessary bureaucracy and could open the way for an unnecessary and extremely costly new leave program for Federal employees.

With these concerns in mind, we prefer an approach that balances employees' needs for leave with the need to serve the public. Because H.R. 4300 fails to achieve this balance, we must oppose the bill. In the meantime, we are eager to work with Federal managers and supervisors to foster appropriate responses to the demands of employees' family lives and to educate them to the many and varied possibilities under our current programs.

The Office of Management and Budget has advised us that there is no objection, from the standpoint of the Administration's program, to the submission of this report.

Sincerely,

CONSTANCE HORNER, *Director.*

U.S. POSTAL SERVICE,
LAW DEPARTMENT,
Washington, DC, June 11, 1986.

Hon. WILLIAM D. FORD,
Chairman, Committee on Post Office and Civil Service. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: We wish to provide the views of the Postal Service on H.R. 4300, the "Parental and Medical Leave Act of 1986." The purpose of this legislation is to give employees in the public and private sectors the right to take parental and medical leave without risking their jobs. Since postal employees, like private employees, are covered by 29 U.S.C. 203(e)(2)(B), they would be covered under Title I of the bill rather than under the civil service title, and our comments are addressed to Title I.

Under section 103 of the bill employees would be entitled to 18 workweeks of parental leave during any 24-month period. Parental leave would be granted because of the birth of a child of the employee, the adoption or placement of a child with the employee, or care for a child with a serious health condition. This leave, which could be unpaid, could be spread over as many as 36 consecutive workweeks, using a reduced leave schedule. It could also be taken intermittently when medically necessary in the case of a child with a serious health condition. An employee could substitute any paid leave to which he is entitled for any part of the 18 week period.

Section 104 of the bill would permit employees with serious health conditions to take unpaid leave for 26 workweeks during any 12 month period. An employee could substitute any paid leave to which he is entitled for any part of the 26 week period. The bill also provides that an employer could require that a claim for leave under this section or for parental leave for a child with a serious health condition be supported by a doctor's certificate.

An employee who takes parental or medical leave would be entitled to be restored either to the job he left or to an equivalent position. A restored employee would be entitled to seniority and benefits accrued prior to the leave, and to seniority and benefits he would have received had he not taken leave. He would not, however, be entitled to seniority and benefits that would have accrued during the leave period. Health benefits would have to be maintained for the employee as if he were continuously employed from the beginning of any leave period until he is restored to duty.

The Postal Service currently provides substantial paid and unpaid leave benefits for its employees for personal and medical purposes, which would require only minor modifications if the bill were enacted. Nevertheless, we are concerned that the procedural aspects of the bill in its present form pose serious problems of potential abuse and expensive litigation.

Entitlement to the proposed benefits involves certain standards which would require the employer to exercise judgment in approving or disapproving a leave request in some circumstances. For example, the temporary medical leave would be available only if a medical condition renders an employee "unable to perform the functions of such employee's position."

Experience under other statutes has shown that certification by one health care provider, as proposed by the bill, is not always sufficient to establish entitlement to benefits. Under a number of federal programs, second and third medical opinions may be appropriate and necessary in some cases to protect against abusive claims.

Given that entitlement to the proposed benefits may not be clear-cut in many cases, we are concerned that the civil enforcement provisions of the bill could invite unnecessary and expensive litigation. For example, section 107(a) of the bill makes it unlawful for an employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under the bill. This provision could subject the employer to the risk of litigation and potential penalties should it seek to deny a leave request which it believes may not be justified. We believe that employers require the right to assure that leave benefits are exercised properly and to discipline employees for leave abuse.

The bill provides an employee the choice of two methods of proceeding against an employer. First, section 108 of the bill would authorize administrative enforcement by the Secretary of Labor, who would have to investigate a charge of a violation within 60 days after receiving it, and issue a complaint based on the charge or dismiss it. If a formal complaint were issued, an administrative hearing would be held before an administrative law judge ("ALJ"). The ALJ's decision would be final, unless the employee or employer appeals the decision to the Secretary of Labor within 30 days after its issuance. If the Secretary modified or vacated the ALJ's decision, any person aggrieved by the final order could appeal to the appropriate United States Court of Appeals. If no appeal were taken from an ALJ's decision and order, the Secretary could petition an appropriate Federal district court to enforce (but not review) the order.

The second method for proceeding against an employer, under section 109, would enable the employee to go directly to Federal or State court, without exhausting any administrative remedies. An employee could also file suit if the Secretary failed to issue a timely administrative complaint or dismissed an employee's administrative charge, unless there has been an administrative settlement. An employee who prevails in court could be awarded wages, salary, employment benefits, or other compensation denied or lost by reason of a violation, plus interest. He would also be entitled to receive the greater of liquidated damages or general and consequential damages, plus reasonable attorneys' fees.

In our opinion, these dual enforcement procedures, which are taken from the Fair Labor Standards Act, are inappropriately applied to the administration of an employee leave benefit program such as the one proposed. They would lead to substantial additional costly litigation and add to the already heavily burdened dockets of the federal courts. Such complex procedures are unnecessary, as simpler enforcement procedures like those of the National Labor Relations Board, at 29 U.S.C. 160, serve very well to afford full protection of employee rights while minimizing the possibility of abuse.

Unpaid leave can present the employer with difficult scheduling problems from a lack of notice. Parental leave benefits should miti-

gate this problem as much as possible by requiring substantial advance notice unless good cause is shown.

For the reasons stated, the Postal Service recommends against enactment of the legislation in its present form.

Sincerely,

FRED EGGLESTON,
Assistant General Counsel,
Legislative Division.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart A—General Provisions

CHAPTER 21—DEFINITIONS

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§ 2105. Employee

(a) * * *

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(c) An employee paid from nonappropriated funds of the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Ship's Stores Ashore, Navy exchanges, Marine Corps exchanges, Coast Guard exchanges, and other instrumentalities of the United States under the jurisdiction of the armed forces conducted for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the armed forces is deemed not an employee for the purpose of—

(1) laws (other than subchapter IV of chapter 53, *subchapter III of chapter 63,* and sections 5550 and 7204 of this title) administered by the Office of Personnel Management; or

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Subpart E—Attendance and Leave

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CHAPTER 63—LEAVE

Subchapter I—Annual and Sick Leave

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SUBCHAPTER III—PARENTAL AND TEMPORARY MEDICAL LEAVE

Sec.
6331. Definitions.
6332. Parental leave.
6333. Temporary medical leave.
6334. Job protection.
6335. Prohibition of coercion.
6336. Health insurance.
6337. Regulations.

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Subchapter III—Parental and Temporary Medical Leave

§ 6331. Definitions

For purposes of this subchapter—

(1) "employee" means—

(A) an employee as defined by section 6301(2) of this title (excluding an individual employed by the government of the District of Columbia); and

(B) an individual under clause (v) or (ix) of such section; whose employment is other than on a temporary or intermittent basis;

(2) "serious health condition" means an illness, injury, impairment, or physical or mental condition which involves—

(A) inpatient care in a hospital, hospice, or residential medical care facility; or

(B) continuing treatment, or continuing supervision, by a health care provider; and

(3) "child" means a biological, adopted, or foster child, stepchild, legal ward, or child of a de facto parent who is—

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of mental or physical disability.

§ 6332. Parental leave

(a) Leave under this section shall be granted on the request of an employee if such leave is requested—

(1) because of the birth of a child of the employee;

(2) because of the placement for adoption or foster care of a child with the employee; or

(3) in order to care for employee's child who has a serious health condition.

(b) Leave under this section—

(1) shall be leave without pay;

(2) may not, in the aggregate, exceed the equivalent of 18 administrative workweeks of the employee during any 24-month period; and

(3) shall be in addition to any annual leave, sick leave, temporary medical leave, or other leave or compensatory time off otherwise available to the employee.

(c) An employee may elect to use leave under this section—

(1) immediately before or after (or otherwise in coordination with) any period of annual leave, or compensatory time off, otherwise available to the employee;

(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

(3) on either a continuing or intermittent basis; or

(4) any combination thereof.

§ 6333. Temporary medical leave

(a) An employee who, because of a serious health condition, becomes unable to perform the functions of such employee's position shall, on request of the employee, be entitled to leave under this section.

(b) Leave under this section—

(1) shall be leave without pay;

(2) shall be available for the duration of the serious health condition of the employee involved, but may not, in the aggregate, exceed the equivalent of 26 administrative workweeks of the employee during any 12-month period; and

(3) shall be in addition to any annual leave, sick leave, parental leave, or other leave or compensatory time off otherwise available to the employee.

(c) An employee may elect to use leave under this section—

(1) immediately before or after (or otherwise in coordination with) any period of annual leave, sick leave, or compensatory time off otherwise available to the employee;

(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

(3) on either a continuing or intermittent basis; or

(4) any combination thereof.

§ 6334. Job protection

An employee who uses leave under section 6332 or 6333 of this title is entitled to be restored to the position held by such employee immediately before the commencement of such leave.

§ 6335. Prohibition of coercion

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with such employee's rights under this subchapter.

(b) For the purpose of this section, "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

§ 6336. Health insurance

An employee enrolled in a health benefits plan under chapter 89 of this title who is placed in a leave status under section 6332 or 6333 of this title may elect to continue the employee's health benefits enrollment while in such leave status and arrange to pay into the Employees Health Benefits Fund (described in section 8909 of

this title), through that individual's employing agency, the appropriate employee contributions.

§ 6337. Regulations

The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall be consistent with the regulations prescribed by the Secretary of Labor under title I of the Parental and Medical Leave Act of 1986.

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